

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
US AIRWAYS, INC.,	:	
	:	
Plaintiff,	:	11 Civ. 2725 (LGS)
	:	
-against-	:	<u>ORDER</u>
	:	
SABRE HOLDINGS CORP., et al.,	:	
	:	
Defendants.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, after the testimony by US Airways' witness John Gustafson, Sabre filed a letter motion, dated May 1, 2022 (Dkt. No. 1191), seeking to introduce evidence and argument of the timing of US Airways' decision to sue, including the so-called "sign-and-sue" evidence, and arguing that US Airways had opened the door to such testimony as referenced in the Court's prior order conditionally precluding such evidence. Having reviewed Sabre's the motion, US Airways' response (Dkt. No. 1192), relevant portions of the trial transcript, and considering the opening statements and trial evidence as a whole to date, it is hereby **ORDERED** that

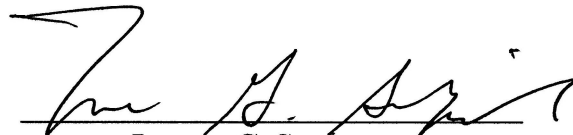
1. The motion is **DENIED**. As before (Dkt. Nos 483, 1132), the evidence is excluded under Federal Rule of Evidence 403 because its probative value is slight where the issue is Sabre's conduct and whether Sabre insisted on anti-competitive contractual provisions, and not US Airways' sincerity when it offered alternatives. That probative value is outweighed by a danger of unfair prejudice by portraying US Airways as a bad actor that deceived Sabre during the 2011 negotiations, confusing the issues by focusing on US Airways' motives. Having heard the evidence, the Rule 403 balance is unchanged as US Airways has not made its subjective state of mind a focus of its case, but rather has emphasized what Sabre offered and

refused to offer US Airways during the negotiations leading up to the 2011 contract.

2. US Airways shall continue in that vein during the remainder of the questioning and in closing argument.

SO ORDERED.

Dated: May 3, 2022
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE